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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES



In re application of

Docket No: Q63117

NOBE, KAZUHIKO, et al.

Appln. No.: 09/783,328

Group Art Unit: 3713

Confirmation No.: 3179

Examiner: Scott E. Jones

Filed: February 15, 2001

For: GAME DEVICE, GAME DEVICE CONTROL METHOD, INFORMATION
☐ STORAGE MEDIUM, GAME DISTRIBUTION DEVICE, AND GAME
☐ DISTRIBUTION METHOD

SUBMISSION OF APPELLANT'S BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an original and two copies of Appellant's Brief on Appeal. Please charge the statutory fee of \$330.00 to Deposit Account No. 19-4880. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account. A duplicate copy of this paper is attached.

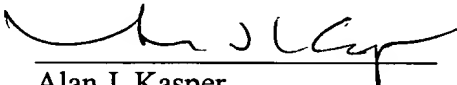
Respectfully submitted,

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23373

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Date: December 8, 2003

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APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. § 1.192

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 1.192, Appellant submits the following:

I. REAL PARTY IN INTEREST

Based on information supplied by Appellant, and to the best of Appellants' legal representatives' knowledge, the real party in interest are the assignees and owners of an undivided interest in the application, Konami Corporation and KCE Tokyo Inc.

II. RELATED APPEALS AND INTERFERENCES

Appellants, as well as Appellants' assigns and legal representatives are unaware of any appeals or interferences which will be directly affected by, or which will directly affect, or have a bearing on the Board's decision in the pending appeal.

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III. STATUS OF CLAIMS

Claims 1-13 are currently pending. The Examiner finally rejected all of claims 1-13 in the final rejection dated May 5, 2003. Thus, claims 1-13 are appealed and, as finally rejected, are set forth in the attached Appendix.

IV. STATUS OF AMENDMENTS

Applicant's Amendment filed on August 5, 2003 in response to the final rejection in an Office Action dated May 5, 2003 that rejected claims 1-13 has been entered; that Amendment did not amend any claims. Applicant's Amendment filed on February 27, 2003, which was filed in response to an Office Action dated November 27, 2002 that rejected claims 1-13 also was entered; the Amendment did not amend any claims. Applicant's Amendment filed on September 18, 2002, which was filed in response to an Office Action dated August 7, 2002 and rejected claims 1-13, was entered; in that Amendment, original claims 1, 5, 8, 9, 10, 12 and 13 were amended. Applicant's Amendment filed on June 7, 2002 in response to a final Office Action dated March 8, 2002 that rejected original claim 7 and allowed claims 1-6 and 8-13 was entered; claim 7 was amended. Applicant's Amendment filed on December 21, 2001 in response to an Office Action dated November 29, 2001 that rejected claims 1-13 was entered; that Amendment did not amend any claims.

An Advisory Action dated August 28, 2003 entered the Amendment filed on August 5, 2003 2003, but continued to hold claims 1-13 unpatentable. Appellants appealed the final rejection on October 6, 2003, following issuance of the Advisory Action

V. SUMMARY OF THE INVENTION

The present invention is directed to a game device, method of controlling a game device, information storage medium related to such method, as well as a distribution system, method of controlling such distribution system, storage medium related to such method and game program code in a computer, that generally concerns a musical action game machine. The significant features of the invention are the use of a "commercially available music CD" or a "commercially

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available music information storage medium” and the reproduction of music from the commercially available music CD or storage medium, the judgment of when certain of such commercially available music CDs or storage media are used, the provision of timing data for a player’s operation of a controller, and the execution of a game in coordination with the play of the commercially available music CD or storage medium and the operation of the controller by the player.

The invention is a significant improvement over a conventional home use game machine that can have “game music data and corresponding operation timing data...together with a game program”, stored in a single CD-ROM. The conventional game machine requires the music, timing and programming to be on a single disk, which may be hard disk device, as stated at page 2, lines 27-32 of the present application. Recording music on a hard drive raises significant copyright problems, as a required copying of the music may not be licensed under applicable copyrights.

By contrast, the present invention does not copy music onto the hard drive or otherwise require the presence of the programming, timing and music to be on a single disk. Instead, a player for a commercially available music CD or storage medium is used to simply play the music, as would be done with a handheld or desk-top CD player. Because there is a need for synchronization between the output from the play of the commercially available music CD or storage medium and the game, a first determination must be made as to whether the commercially available music CD or storage medium is of a predetermined type of commercially available music CD or storage medium. The game must be responsive to that determination and must then identify timing instances at which a player should operate a controller in accordance with the music that is produced from the commercially available music CD or storage medium. Nothing of the sort is seen in the related art described at page 2 of the instant application.

These distinctive operational and structural features are specified in each of the rejected independent claims. Specifically, all of the claims require a means or step of reproducing music from a commercially available music CD or storage medium, which serves as “game music”.

The reproduction is direct and does not require the problematic storage of the music by a user. Further, there is the means or step of judging whether the commercially available music CD or storage medium is of a predetermined type, based on the recorded content. Third, there is a requirement for operation timing data which indicates the timing at which a player should operate a controller in accordance with the game music reproduced from the commercially available music CD or storage medium. This is an important feature to cue the player actions based on a detection of the timing on the commercially available music CD or storage medium. Finally, the game has an execution means or step which causes the reproduction of music from the commercially available music CD or storage medium, if it is judged to be such and to guide timing at which the player should operate the controller based on the operating timing data.

VI. ISSUES

This appeal presents the following two issues:

- A. Are Claims 1-8 and 11-13 unpatentable over the combination of Sagawa et al (EP 903,169) in view of Olmedo (6,174,170) under 35 USC §103(a)?
- B. Are Claims 9 and 10 unpatentable over the combination of Sagawa et al (e.g., 903,169) in view of Olmedo (6,174,170) further in view of Ng (6,328,570) under 35 USC §103(a)?

VII. GROUPING OF CLAIMS

Claims 1-4 and 7-12 stand and fall together, because they are directed to the basic feature of an apparatus, method and storage medium that embodies or enables a game that uses a “commercially available music CD” or “commercially available music information storage medium” and permits players to control a game device in accordance with timing derived from the reproduction of the commercially available music CD or storage medium.

Claims 5 and 6 stand and fall together because they are directed to features of an apparatus and method that embodies the features of claims 1 and further expressly specifies the

apparatus and steps of distributing operation timing data and distributing a program code for causing a computer to operate as a game device

Claim 13 stands and falls alone as it is directed to game program code in combination with a computer for causing the computer to perform a plurality of operations related to game music on a commercially available music information storage medium.

VIII. ARGUMENTS

Claims 1-8 and 11-13 Are Patentable Over Sagawa et al (EP 903,169) in view of Olmedo (6,174,170) under 35 USC §103(a)

As noted in Section V, Summary of the Invention, particularly at page 2, line 1 - page 3, line 2, the invention improves over the conventional art by being adapted to use a “commercially available music CD” or “commercially available music information storage medium”. These phrases are defined in the Background portion of the application as the conventional music CD, DVD or MD generally purchased for play of music on a conventional CD, DVD or MD player. This term is contrasted to, and thus does not include, a specialized game CD that contains both music and game timing information. Applicants previously summarized the significant features of the invention, that distinguishes the invention over the prior art, as comprising the combination of:

- (1) the use of a “commercially available music CD” or “commercially available music information storage medium” and the reproduction of music from such CD or storage medium,
- (2) the judgment of when certain of such “commercially available music CDs” or “commercially available music information storage medium” are used,
- (3) the provision of timing data for the player’s operation of a controller, and
- (4) the execution of a game in coordination with a play of the “commercially available music CD” or “commercially available music information storage medium”.

Sagawa et al

As a preliminary matter, Appellants note that Sagawa et al is assigned to Konami, a joint assignee of the present application, and describes an early version of a general class of products called a "musical action game machine." As such, Sagawa may be considered to be representative of the background of the present invention, as described at pages 1-3 of the present application. Thus, many of the key features of the invention are not found in Sagawa.

One key feature is the ability to use a "commercially available music CD" or "commercially available music information storage medium." Sagawa et al teaches an approach where a musical action game machine is operative on the basis of the content of a single CD ROM, where the single CD-ROM disk includes music, timing and programming. In other words, this CD ROM is a specialty disk, requiring special manufacture and processing, and is not a "commercially available music CD" or "commercially available music information storage medium" as those terms are clearly defined in the specification and understood in the art. There is no teaching that the specialty CD-ROM of Sagawa can be played on a standard music CD player. The Examiner admits to this deficiency.

However, the Examiner asserts that the operation timing data storage means is disclosed at col. 3, lines 26-42 and col. 8, line 46-col. 9, line 46 of Sagawa et al. While Sagawa et al is concerned with providing operation timing data for coordination of a player's operation of an operation member, this feature is not compatible with a commercially available music CD. In other words, the auxiliary storage device 56 or possibly RAM 54 or ROM 55 in Fig. 6, does not represent a storage for operation timing data related to the play of music from a commercially available music CD. The generation of timing data with a commercially available music CD would clearly use different processing from that used by a device that simply extracts timing data from a specialty CD.

Finally, the Examiner asserts that there is a "music game execution means" disclosed in the same portions of the specification in Sagawa et al. Again, there is no teaching of an execution on the basis of music read from a commercially available music CD, which offers

special challenges over the execution of a game by reliance on programming and timing stored directly on the CD.

The Examiner acknowledges that Sagawa does not teach at least a judgments means for reading the recorded content of a commercially available music CD and determining whether it is a predetermined type CD based on recorded music content. For this admittedly missing feature, the Examiner looks to Olmedo.

Olmedo

The patent to Olmedo discloses a Karaoke machine, whose purpose (allowing singers to follow lyrics on a screen as background music is played) and focus (generating the music and lyrics without regard to the input of a singer) is wholly different from that of a music game machine (interactive and competitive game play). While Olmedo plays music from CDs, they typically are specialized CD's having music, programming and timing embedded on a single disk, as taught with respect to the first embodiment. There is a second embodiment, as subsequently discussed, that uses "standard" CD's but requires special programming on the "standard" CD as well as a second specialized timing CD. In neither case is there the use of a "commercially available music CD" or a "commercially available music information storage medium." Further, there is no "judgment means" related to a "commercially available music CD" or a "commercially available music information storage medium" taught with respect to the first or second embodiments of Olmedo.

Moreover, the Olmedo system provides text of a song on a display, but it does not provide "operation timing data" indicative of timings at which a player should operate a controller in accordance with the game music. Singing the song is not operating a controller. The term "controller" has a conventional meaning in the art and indicates that a player is providing input to a game machine. A microphone on a Karaoke machine is not a game machine controller. The Examiner acknowledges that Olmedo "seems to lack a teaching of a player operating a controller to provide an input to the game based upon operation instructions provided to a player". The Examiner asserts that one could argue that singing into a microphone provides an input to a controller for a Karaoke game. Clearly this is not the case as already noted.

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In framing his final rejections, the Examiner admits that Sagawa lacks the ability to use a commercially available music CD (page 4 of the final Office Action dated May 5, 2003). The Examiner states that Sagawa discloses "everything except for the ability to use a **"commercially available music CD."** The Examiner asserts that (1) Olmedo remedies this deficiency and (2) Olmedo is combinable with Sagawa. Appellants respectfully submit that the Examiner's position should be overturned for the following reasons.

(1) Neither Sagawa nor Olmedo Use a "Commercially Available Music CD"

All of the claims require a game device, (claims 1 and 7) game distribution (claim 5), or information storage medium (claims 8, 10 and 12), all of which require a structure, code or ability to play a "commercially available music CD" or a "commercially available music information storage medium." This is a key feature of the invention. Because of significant copyright concerns, an existing problem in the prior art is the potential violation of copyright where commercially available CD music is stored on the hard drive so that it can be matched with timing and programming. The present invention acts like a conventional standard CD player and simply reproduces commercially available music CDs as does a conventional handheld or desk-CD player.

Sagawa does not use a "commercially available music CD" or "commercially available music information storage medium". This is admitted by the Examiner.

Olmedo does not remedy this deficiency in the context of the claims when viewed as a whole. The first embodiment of Olmedo requires a specialized disc that combines audio frames and text character frames that is not a "commercially available music CD." The second embodiment of Olmedo may use a "conventional CD" 86, but the CD 86 must be customized for karaoke operation.

As is clear from the disclosure at columns 9, lines 32-37, and 61-62 in the Olmedo patent, the CD 86 has recorded thereon TOC addressing data and phrase advance data. The TOC addressing data is normally recorded on audio CD's (col. 9, lines 37-40) and is used to correlate to the text data stored in EEPROM 82 for subsequent access and playback. The text and TOC addressing data may be preloaded in the EEPROM 82 (col. 10, line 44) or contemporaneously

loaded from a special timing CD 80 or a memory cartridge, as explained beginning at col. 8, line 25, particularly at col. 10, lines 40-53. The phrase advance data on the audio CD is used to establish the timing for reading out the text retrieved in response to the TOC addressing of the EEPROM 82 and stored in RAM 87, and enable the display of lyrics in accordance with the play of music for a karaoke function. To the extent that the CD 86 has specialized phrase advance data added thereto, it is not a “commercially available music CD” or “commercially available music information storage medium” as used in the present invention. Similarly, where the unused bits of control data C recorded on the CD are used as TOC addressing data (col. 10, lines 25-39), the special programming of such bits in a CD for purposes of controlling a karaoke machine would preclude it from being considered a “commercially available music CD” or “commercially available music information storage medium.”

By contrast, the present invention does not generate the timing data from any special content of the “commercially available music CD” or “commercially available music information storage medium.” As disclosed in the specification of the present application at page 20, lines 14-18 and at page 23, lines 18 to 29, the present invention acquires the timing based on the current play position of the commercially available music CD and the timing data which is recorded in the game disk.

(2) Neither Sagawa nor Olmedo Use the Claimed Judgment Structure or Step

The present invention requires a commercially available music CD judgment means or step (or a “commercially available music information storage medium judgment means or step”) to determine if a predetermined type of commercial music CD is being used, based on the music content. This is an important feature involving a determination as to whether the CD is of a predetermined type of commercially available music CD that can be read to detect play position information for use in developing timing. This involves a programmable choice between a predetermined type and other types that are different.

There is no such judgment step or structure in Sagawa. First, since the Examiner admits that there is no “commercially available music CD” (or a “commercially available music information storage medium judgment means or step”) contemplated by Sagawa, such judgment

cannot exist. Second, since Sagawa does not even contemplate use of a "commercially available music CD," no need for such judgment exists. Indeed, the focus in Sagawa on a game machine that reads CD's, which combine timing and music on a single disc, would lead one of ordinary skill away from use of such judgment means or step.

Olmedo does not teach such judgment step or structure either since Olmedo also does not use a "commercially available music CD" (or a "commercially available music information storage medium"). Olmedo does not teach any step of reading content of the CD and judging whether the CD is a predetermined type of CD, even with respect to the programmed CD's 86. As disclosed, when a CD is inserted for play, the TOC information is matched to stored data in the EEPROM 87, but no judgment is made as to type of CD.

In short, nothing in either reference would lead one skilled in the art to implement such judgment means or step, as there is no reason to do so.

(3) Neither Sagawa nor Olmedo Provide Timing for Operation of a Controller

The present invention solves a need for synchronization between the output from the play of the conventional music CD and a game. The game must identify timing instances at which a player should operate a controller in accordance with the music that is produced from such a conventional music CD. In this context, the "controller" is a device 32 as illustrated in Fig. 2 of the application that has buttons 34, 36 and 38 through which a player manually enters commands to the game processor 14. It is clear that the timing for operating a controller is directed to a player. The term "controller" is not used to refer to the processor itself. There are various dedicated controllers for music games such as a dance mat type, a guitar type, and a drum type, in addition to the type disclosed in Fig. 2 of the specification of the present application. The player operates the controller in accordance with instructions and images displayed on the screen, as explained beginning at page 16 of the specification. The instructions and timing are derived from reading the music on the commercially available music CD (or a "commercially available music information storage medium").

Sagawa cannot have such feature since it does not use a "conventional music CD," as admitted by the Examiner. Olmedo cannot have such device since it also does not use a

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“conventional music CD” (or a “commercially available music information storage medium”) and is not a game machine and has no “controller”. Thus, neither reference teaches the claimed structure or step. The Examiner’s reference to “the controller senses/judges and identifies text characters” (page 3 of the Office Action dated May 5, 2003) references an inapplicable structure namely a processor. The Applicant does not use the term “controller” in that sense but uses it in a conventional sense in the video game arts. Moreover, the claims refer to the player operating a controller, a reference clearly not at all applicable to a processor. Specifically, the claims require use of operation timing data which indicates the timing at which a player should operate a controller in accordance with the game music reproduced from the commercially available music CD (or a “commercially available music information storage medium”). The Examiner must use the term as defined by the Applicants and as used in the specification and claims, and as is conventionally understood in the art.

Given the definition, the prior art is deficient in such teaching. Thus, there cannot be a storage means or step of storing timing data indicative of timings at which the player should operate a controller. There is not provision in any of the prior art of a memory having timing based on a recorded content of a commercially available music CD (or a “commercially available music information storage medium”) for a player operation of a controller.

(4) Neither Sagawa nor Olmedo Execute a Game with a Controller According to Provided Timing

The claims require a structure or step of executing a game to reproduce the music on a commercially available music CD (or a “commercially available music information storage medium”) in response to the judgment function (of which there is none in the prior art) and for guiding timings in which the player should operate a controller based on the operating timing data. Again, there is no such use of a “controller” in the prior art. The Examiner asserts that Olmedo’s system provides text of song on a display that indicates a timing. The Examiner asserts that this is equivalent to operation timing data indicative of times at which a player should operate a controller in accordance with game music. However, there is no controller in Olmedo’s system. A karaoke machine is not combined with a controller for use by a player.

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In sum, viewing the claimed invention as a whole, none of the features which together define the present invention as set forth in claims 1-8 and 11-13, are found in Sagawa or Olmedo. There is no judgment means or step with respect to a “commercially available music CD” (or a “commercially available music information storage medium”), no requirement for operation of a controller in accordance with the game music reproduced from a “commercially available music CD” (or a “commercially available music information storage medium”), and no execution means or step which causes reproduction of music from a “commercially available music CD” (or a “commercially available music information storage medium”) and guides timing at which a player should operate a controller based on the operating timing data that has been generated. These are structural and functional limitations in the claims that are important to the claimed game environment but clearly cannot be found in Sagawa et al, since it does not reproduce commercially available music CDs or storage media. They cannot be found in Olmedo since it is not a game machine and does not use commercially available music CDs or storage media.

Given the absence of key features from each of the two references, one skilled in the art would not be motivated to derive the present invention from their teachings and, in fact, would be led away from the present invention.

Sagawa Teaches Away From Use of a Commercially Available Music CD or Media

Viewing Sagawa as a whole, and not “piecemeal” as the Examiner argues, an entirely different approach to providing music in combination with a game is presented. The electronic circuitry, software and algorithms associated with the Sagawa et al system teaches towards specialized programming and storage media, rather than the use of “commercially available music CDs” (or a “commercially available music information storage medium”). There is no motivation in Sagawa et al or even a recognition that it would be desirable for use of a “commercially available music CD” (or a “commercially available music information storage medium”).

Olmedo Teaches Away From the Present Invention

The Examiner states that he relies on Olmedo to teach the feature of using a “commercially available music CD” (or a “commercially available music information storage medium”) to play a game. However, the Examiner’s reliance on Olmedo is misplaced.

First, Olmedo does not teach a game. Olmedo teaches a karaoke machine, which is not a game machine but a sing-along entertainment device. In a karaoke machine, there must be either (1) a storage medium that combines music with instructions for singing (words, tempo and video) or (2) separate but coordinated sources of music and instructions. A commercially available music CD alone cannot be used. As already noted, the CD used by Olmedo and relied upon by the Examiner uses phrase advance data in combination with music on CD 86. This is not a “commercially available music CD” (or a “commercially available music information storage medium”). By contrast, the present invention uses a commercially available music CD that one buys at any music store and does not rely on special data or phase information to provide timing.

Second, music reproduction, instructions or programming that may be provided by Olmedo relate to instructing a participant to sing, rather than use a controller. There is no reason to use a controller in Olmedo, as it is not a game machine. Thus, Olmedo teaches away from the combination as claimed, which expressly relies on the use of a “commercially available music CD” and a game controller.

Third, Olmedo teaches that a separate storage medium, on which text characters are stored, which may be a storage cartridge or a specialized timing CD, must be used. This teaches away from the feature of the present invention that relies on the music from a commercially available CD (or a “commercially available music information storage medium”) to generate the timing data for operation of a controller by a player.

The Examiner is Using Hindsight and Still Cannot Create the Invention

Applicant respectfully submits that the Examiner must use impermissible hindsight in any attempt to merge a game system as in Sagawa, which relies upon the combined storage of timing and music on a single CD, with a karaoke machine that has no relationship to a game and

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no need for a controller. Moreover, as already pointed out, the karaoke machine in Olmedo uses a CD that is not a commercially available disk, since it uses phrase advance data. Clearly, there still is an important missing element of the claimed invention. Thus, any assertion that the game in Sagawa may be combined with the karaoke machine in Olmedo, and further that such combination would be modified to remove timing required by Sagawa and special phase required by Olmedo, would involve a clear application of hindsight.

The limitations in the claim that define the entire invention cannot be met by the piecemeal combination of references based on hindsight as proposed by the Examiner. Nothing in Sagawa et al teaches or suggests the use of a conventional "commercially available music CD" (or a "commercially available music information storage medium"). Everything in Sagawa teaches the opposite. Nothing in Olmedo teaches the use of a game machine and a controller that is compatible with a "commercially available music CD" (or a "commercially available music information storage medium"). Olmedo requires the use of a special CD with phrase advance data in a first embodiment, and a need for a separate and compatible CD or storage device that contains timing in the second embodiment. Moreover, nothing in the second embodiment teaches or suggests use in a game environment, particularly one with a controller. The only thing that Olmedo teaches is a conventional karaoke machine.

In short, the two cited references teach processes and have goals that are very different from each other. Moreover, the two processes and goals are very different from those of the present invention. Thus, the only conclusion that can be reached is that claims 1-8 and 11-13 are patentable.

Claims 5 and 6

Claims 5 and 6, which are patentable for the reasons given above, also are patentable by virtue of their additional recitation of a means for distributing operation timing data and means for distributing program code (claim 5), and the steps for such distribution (claim 6). Nothing in the prior art patents to Sagawa or Olmedo discuss distribution of operational timing data and program code. Such additional structure and steps are illustrated in Fig. 6 and disclosed at page

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26 of the present application and would encompass at least a network 60 with game distribution device 58 connecting users (62, 64, 66) with the server 56 and store 54.

Claim 13

Claim 13 is patentable for the reasons already given and, additionally, because it concerns a game program code acting upon a computer to perform a plurality of operations that cause a computer to act as a game device.

Claims 9 and 10 are not unpatentable over the combination of Sagawa et al (e.g., 903,169) in view of Olmedo (6,174,170) further in view of Ng (6,328,570) under 35 USC §103(a).

Ng

The patent to Ng does not remedy the deficiencies of Sagawa et al alone or in combination with Olmedo. Ng teaches a portable Karaoke unit where a song and program data are stored and retrieved from different sources. As already noted, a Karaoke player is totally different from a music game of the type disclosed in Sagawa and the subject of the present invention. The only reason for citing Ng is to teach downloading of song, lyrics and image from a variety of sources, including the internet. However, the basic problems of Sagawa et al and Olmedo are not remedied by the citation of Ng.

With regard to the foregoing rejection of claims 9 - 10 under 35 U.S.C. § 103(a), the Examiner simply asserts that the Appellants' arguments amount to a "general allegation" that the claims define the patentable invention without specifically pointing out how the language of the claims patently distinguishes them from the reference. Appellants respectfully submit that the Examiner is mistaken in this regard.

Appellants have demonstrated that neither Sagawa et al nor Olmedo teach the game machine, process or method or medium as claimed that allows a "commercially available music CD" or "commercially available music information storage medium" to be played without raising copyright problems. Indeed, Olmedo does raise just such issues, as the text for a song must be stored in memory prior to display. Moreover, nothing in this art teaches or suggests an

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environment in which a game controller may be used in coordination with timing derived from the music on a "commercially available music CD" or "commercially available music information storage medium." The Examiner has not pointed to the structure in any of these prior art references that perform these functions for the four key points identified above. On this basis alone, the present rejection is overcome.

The Applicants further respectfully submit is that Ng does not remedy these deficiencies. This is not a general allegation, contrary to the Examiner's characterization in an earlier Office Action. It is specific in that the Examiner has admitted that Ng is cited solely for teaching downloading of a song, lyrics and images from a variety of sources, including the Internet. The Examiner cannot dispute that the fundamental deficiencies of the other references have not been remedied by Ng. There is no teaching or suggestion as to how they may be remedied. Thus, Applicants response is more than a general allegation, but it is specific to the rejection raised by the Examiner. Accordingly, these claims should be considered patentable over the prior art.

IX. CONCLUSION

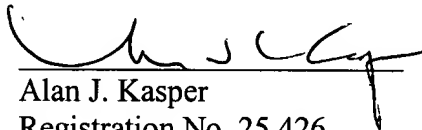
On the basis of the foregoing, clearly all of claims 1-13 would be patentable over the cited art. Applicant has asserted a clear distinction over the combination of Sawada and Olmedo, alone or in combination with Ng. Accordingly, reversal of the Examiner's rejection is respectfully requested. Allowance of all of claims 1-13 should follow in due course.

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The present Brief on Appeal is being filed in triplicate. Unless a check is submitted herewith for the fee required under 37 C.F.R. §1.192(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: December 8, 2003

APPENDIX

CLAIMS 1-13 ON APPEAL:

1. A game device having a controller operated by a player in accordance with game music, comprising:

commercially available music CD reproducing means for reading recorded content from a commercially available music CD to reproduce music as game music based on the recorded content read;

commercially available CD judgment means for reading recorded content from a commercially available music CD to judge whether or not the commercially available music CD is a predetermined commercially available music CD based on the recorded content read;

operation timing data storage means for storing operating timing data indicative of timings at which the player should operate the controller to meet preprogrammed game criteria in accordance with the game music reproduced based on the recorded content read from the predetermined commercially available music CD; and

music game execution means for causing the commercially available music CD reproducing means to reproduce music as game music based on the recorded content read from the commercially available music CD, in response to a judgment such that the commercially available music CD, of which recorded content is read by the commercially available music CD judgment means, is the predetermined commercially available music CD, and for guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

2. A game device according to claim 1, wherein

the commercially available music CD judgment means includes judgment data storage means for storing beforehand at least a part of the recorded content of the predetermined commercially available music CD as judgment data, and judges whether or not the commercially

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available music CD, of which recorded content is read by the commercially available music CD judgment means, is the predetermined commercially available music CD by comparing the judgment data and the recorded content of the commercially available music CD, read by the commercially available music CD judgment means.

3. An information storage medium storing game program code and game data for causing a computer to function as a game device having a controller operated by a player in accordance with game music, the computer being equipped with a commercially available music CD reproducing function for reading recorded content from a commercially available music CD to reproduce music based on the recorded content read, wherein

the information storage medium stores operation timing data, as at least a part of the game data, indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the recorded content read from a predetermined commercially available music CD, and program code, as at least a part of the game program code, for causing the computer to function as

commercially available music CD reproducing means for reading recorded content from a commercially available music CD to reproduce music as game music based on the recorded content read by using the commercially available music CD reproducing function;

commercially available CD judgment means for reading recorded content from a commercially available music CD by using the commercially available music CD reproducing function to judge whether or not the commercially available music CD is the predetermined commercially available music CD based on the recorded content read; and

music game execution means for causing the commercially available music CD reproducing means to reproduce music as game music based on the recorded content read from the commercially available music CD, in response to a judgment such that the commercially available music CD, of which recorded content is read by the commercially available music CD judgment means, is the predetermined commercially available music CD, and for guiding

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timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

4. A method for controlling a game device equipped with a commercially available music CD reading and reproducing function and having a controller operated by a player in accordance with game music, the method comprising:

a commercially available music CD reproducing step of reading recorded content from a commercially available music CD to reproduce music as game music based on the recorded content read by using the commercially available music CD reproducing function;

a commercially available CD judgment step of reading recorded content from a commercially available music CD by using the commercially available music CD reproducing function to judge whether or not the commercially available music CD is a predetermined commercially available music CD based on the recorded content read;

an operation timing data obtaining step of obtaining operating timing data indicative of timings at which a player should operate the controller in accordance with the game music reproduced based on the recorded content read from the predetermined commercially available music CD; and

a music game execution step of effecting reproduction of music as game music at the commercially available music CD reproducing step based on the recorded content read from the commercially available music CD, in response to a judgment such that the commercially available music CD, of which recorded content is read at the commercially available music CD reproducing step, is the predetermined commercially available music CD, and of guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

5. A game distribution device for distributing game program code and game data for causing a computer to function as a game device having a controller operated by a player in

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accordance with game music, the computer being equipped with a commercially available music CD reproducing function for reading recorded content from a commercially available music CD to reproduce music based on the recorded content read, wherein the game distribution device comprises:

means for distributing operation timing data, as at least a part of the game data, indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the recorded content read from a predetermined commercially available music CD, and

means for distributing program code, as at least a part of the game program code, said code being operative for causing the computer to function as

(a) commercially available music CD reproducing means for reading recorded content from a commercially available music CD to reproduce music as game music based on the recorded content read by using the commercially available music CD reproducing function;

(b) commercially available CD judgment means for reading recorded content from a commercially available music CD by using the commercially available music CD reproducing function to judge whether or not the commercially available music CD is the predetermined commercially available music CD based on the recorded content read; and

(c) music game execution means for causing the commercially available music CD reproducing means to reproduce music as game music based on the recorded content read from the commercially available music CD, in response to a judgment such that the commercially available music CD, of which recorded content is read by the commercially available music CD judgment means, is the predetermined commercially available music CD, and for guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

6. A game distribution method for distributing game program code and game data for causing a computer to function as a game device having controller operated by a player in

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accordance with game music, the computer being equipped with a commercially available music CD reproducing function for reading recorded content from a commercially available music CD to reproduce music based on the recorded content read, the method comprising:

an operation timing data distribution step of distributing operation timing data, as at least a part of the game data, indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the recorded content read from a predetermined commercially available music CD; and

a program distribution step of distributing program code, as at least a part of the game program code, for causing the computer to function as

commercially available music CD reproducing means for reading recorded content from a commercially available music CD to reproduce music as game music based on the recorded content read by using the commercially available music CD reproducing function;

commercially available CD judgment means for reading recorded content from a commercially available music CD by using the commercially available music CD reproducing function to judge whether or not the commercially available music CD is the predetermined commercially available music CD based on the recorded content read; and

music game execution means for causing the commercially available music CD reproducing means to reproduce music as game music based on the recorded content read from the commercially available music CD, in response to a judgment such that the commercially available music CD, of which recorded content is read by the commercially available music CD judgment means, is the predetermined commercially available music CD, and for guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

7. A game device of which controller is operated by a player in accordance with game music, comprising:

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commercially available music reproducing means for reading recorded content from a commercially available music information storage medium which records at least music data, to reproduce music as game music based on the recorded content read;

commercially available music information storage medium judgment means for judging whether or not the commercially available music information storage medium, recording content of which is read by the commercially available music reproducing means, is a predetermined commercially available music information storage medium;

operation timing data storage means for storing operating timing data indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the recorded content read from the predetermined commercially available music information storage medium; and

music game execution means for causing the commercially available music reproducing means to reproduce music as game music based on the recorded content read from the commercially available music information storage medium, in response to a judgment such that the commercially available music information medium, of which recorded content is read by the commercially available music reproducing means, is a predetermined commercially available music information storage medium, and for guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

8. An information storage medium storing game program code and game data, said game program code and game data comprising:

(1) instructions for causing a computer to function as a game device having a controller operated by a player in accordance with game music, the computer being equipped with a commercially available music information storage medium reproducing function for reading recorded content from a commercially available music information storage medium which records at least music data, to reproduce music based on the recorded content read,

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(2) operation timing data, as at least a part of the game data, indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the recorded content read from a predetermined commercially available music information storage medium, and

(3) program code, as at least a part of the game program code, for causing the computer to function as

(a) commercially available music information storage medium reproducing means for reading recorded content from a commercially available music information storage medium to reproduce music as game music based on the recorded content read by using the commercially available music information storage medium reproducing function;

(b) commercially available music information storage medium judgment means for reading recorded content from a commercially available music information storage medium by using the commercially available music information storage medium reproducing function to judge whether or not the commercially available music information storage medium is the predetermined commercially available music information storage medium based on the recorded content read; and

(c) music game execution means for causing the commercially available music information storage medium reproducing means to reproduce music as game music based on the recorded content read from the commercially available music information storage medium, in response to a judgment such that the commercially available music information storage medium, of which recorded content is read by the commercially available music information storage medium judgment means, is the predetermined commercially available music information storage medium, and for guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

9. (Amended) A game device having a controller operated by a player in accordance with game music, comprising:

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music data reproducing means for obtaining music data from a music data distribution server via a communication network to reproduce music as game music based on the music data obtained;

music data judgment means for judging whether or not the music data obtained by the music data reproducing means is predetermined music data;

operation timing data obtaining means for obtaining operation timing data indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the predetermined music data; and

music game execution means for causing the music data reproducing means to reproduce music as game music based on the music data, in response to a judging by the music data judgment means that the music data obtained by the music data reproducing means is the predetermined music data, and for guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

10. An information storage medium storing game program code and game data for causing a computer to function as a game device having a controller operated by a player in accordance with game music, said program code and game data comprising:

program code operative to cause the computer to function as

(a) music data reproducing means for obtaining music data from a music data distribution server via a communication network to reproduce music as game music based on the music data obtained;

(b) music data judgment means for judging whether or not the music data obtained by the music data reproducing means is predetermined music data;

(c) operation timing data obtaining means for obtaining operation timing data indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the predetermined music data; and

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(d) music game execution means for causing the music data reproducing means to reproduce music as game music based on the music data, in response to a judgment such that the music data obtained by the music data reproducing means is the predetermined music data, and for guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

11. A game device having a controller operated by a player in accordance with game music, comprising:

a commercially available music information storage medium reproducer which reads recorded content from a commercially available music information storage medium recording at least music data, to reproduce music as game music based on the recorded content read;

a commercially available music information storage medium judgment unit which judges whether or not the commercially available music information storage medium, of which recorded content is read by the commercially available music information storage medium reproducer, is a predetermined commercially available music information storage medium;

an operation timing data storage medium which stores operating timing data indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the recorded content read from the predetermined commercially available music information storage medium; and

a music game execution unit which causes the commercially available music information storage medium reproducer to reproduce music as game music based on the recorded content read from the commercially available music information storage medium, in response to a judgment such that the commercially available music information storage medium, of which recorded content is read by the commercially available music information storage medium reproducer, is the predetermined commercially available music information storage

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medium, and guides timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

12. An information storage medium storing game program code and game data, said game program code and game data comprising:

(1) instructions for causing a computer to function as a game device having a controller operated by a player in accordance with game music, the computer being equipped with a commercially available music information storage medium reproducing function for reading recorded content from a commercially available music information storage medium recording at least music data, to reproduce music based on the recorded content read,

(2) operation timing data, as at least a part of the game data, indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the recorded content read from a predetermined commercially available music information storage medium, and

(3) program code, as at least a part of the game program code, for causing the computer to function as

(a) a commercially available music information storage medium reproducer which reads recorded content from a commercially available music information storage medium to reproduce music as game music based on the recorded content read by using the commercially available music information storage medium reproducing function ;

(b) a commercially available music information storage medium judgment unit which reads recorded content from a commercially available music information storage medium by using the commercially available music information storage medium reproducing function to judge whether or not the commercially available music information storage medium is the predetermined commercially available music information storage medium based on the recorded content read; and

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(c) a music game execution unit which causes the commercially available music information storage medium reproducer to reproduce music as game music based on the recorded content read from the commercially available music information storage medium, in response to a judgment such that the commercially available music information storage medium, of which recorded content is read by the commercially available music information storage medium reproducing function, is the predetermined commercially available music information storage medium, and guides timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.

13. Game program code for causing a computer to function as a game device having a controller operated by a player in accordance with game music, the computer being equipped with a commercially available music information storage medium reproducing function for reading recorded content from a commercially available music information storage medium recording at least music data, to reproduce music based on the recorded content read, the game program code for controlling the computer to perform a plurality of operations comprising:

receiving operation timing data, as at least a part of the game data, indicative of timings at which the player should operate the controller in accordance with the game music reproduced based on the recorded content read from a predetermined commercially available music information storage medium;

reading recorded content from a commercially available music information storage medium to reproduce music as game music based on the recorded content read by using the commercially available music information storage medium reproducing function;

reading recorded content from a commercially available music information storage medium by using the commercially available music information storage medium reproducing function to judge whether or not the commercially available music information storage medium is the predetermined commercially available music information storage medium based on the recorded content read; and

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causing the commercially available music information storage medium reproducing function to reproduce music as game music based on the recorded content read from the commercially available music information storage medium, in response to a judgment such that the commercially available music information storage medium is the predetermined commercially available music information storage medium; and

guiding timings at which the player should operate the controller in accordance with the game music reproduced, based on the operation timing data.